

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 745 of 1990

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KOLI DEVABHAI TALSHIBHAI

Versus

UJAMSHI THAKERSHIBHAI

Appearance:

MR PS CHAMPANERI for Petitioner

MR MC BAROT for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 08/12/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the defendant-tenant, challenging the judgement and decree of eviction passed against him by the trial court and confirmed by the lower appellate court in appeal.

2. The respondent-plaintiff-landlord sued the defendant-tenant for a decree of eviction under the provisions of the Bombay Rent Act on two grounds. The plaintiff-landlord firstly contended that the defendant-tenant was in arrears of rent for more than six months and had neglected or omitted to pay the same in spite of the statutory notice of demand. The second ground was that the landlord bonafide required the suit premises for his personal use and occupation and that the landlord would suffer greater hardship if such a decree were refused than the tenant if such a decree were passed. The trial court, after appreciating the evidence on record, found that the landlord had proved by appropriate evidence on record that the tenant was in arrears of rent for more than six months, that the tenant had failed to pay up such arrears within one month of the service of the statutory notice, that the case was, therefore, covered by section 12(3)(a) of the Bombay Rent Act and that the court had no option but to pass a decree for eviction. The trial court also found in favour of the plaintiff-landlord on the issue of personal and bonafide requirement.

3. The tenant thereupon preferred an appeal under section 29(1) of the Bombay Rent Act to the Lower appellate court. The latter Court, after a total reappreciation of the evidence on record, confirmed the findings of fact recorded by the trial court and confirmed the judgement and decree passed by the trial court while dismissing the appeal. Hence the present revision under section 29(2) of the Bombay Rent Act.

4. Before proceeding with the merits of the matter it would be pertinent to bear in mind the principles laid down by the Supreme Court while dealing with the revisions arising under section 29(2) of the said Act. The Supreme Court in the case of Patel Valmik Himatlal & Others Vs. Patel Mohanlal Muljibhai [1998(2) GLH 736 = AIR 1998 SC 3325], while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Mohmad Mirasaheb Kadri [AIR 1987 SC 1782], held that High Court cannot function as a court of appeal, cannot reappreciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be

possible.

5. Only a few salient features require to be noted.

The case of the landlord as made out in the statutory notice and in the suit plaint was that the suit premises were let out at a contractual rent of Rs.10/- per month, that the defendant-tenant was in arrears of rent from 1st July 1978 to 30th July 1983 at the time of issuance of the statutory notice under section 12(2) of the said Act, that in spite of receipt of the said notice the tenant had failed to pay the amount of arrears within a month thereof, and that therefore the tenant was liable to be evicted under section 12(3)(a) of the said Act. The landlord further pleaded that he required the suit premises reasonably and bonafide for his personal use and occupation for himself and his family.

6. It is pertinent to note that the defendant-tenant had not replied to the landlord's statutory notice at Exh.21 at all.

7. The case put up by the defendant-tenant in his written statement at Exh.11, apart from other denials, raised a dispute as to standard rent. It is by now well settled law that the tenant, in order to take his case out of the purview of section 12(3)(a) of the said Act, must raise dispute as to standard rent within 30 days of receipt of the statutory notice, either by giving a reply thereto raising such dispute or by filing an independent application for this purpose under section 11(3) of the said Act. In the instant case the defendant-tenant had not replied to the landlord's suit notice. Therefore, there was no question of raising any dispute as to standard rent in his reply to the statutory notice. Although the tenant factually did raise a dispute as to standard rent, this dispute was first raised in his written statement at Exh.11, and only at a subsequent point of time after the filing of the written statement, the tenant filed an application under section 11(3) of the said Act. As aforesaid, it is well settled law that unless a dispute as to standard rent is raised within 30 days of the receipt of the statutory notice, the case would be covered by section 12(3)(a) of the said Act.

7. Therefore, the courts were only required to consider the factual aspect as to whether the tenant had met the demand within 30 days of the statutory notice.

8. The statutory notice issued by the landlord is dated 3rd August 1983 at Exh.21 on record. It is the landlord's case, both pleaded and proved by evidence on

record, that the tenant refused to accept the said statutory notice. The original envelope sent by registered post and bearing the endorsement of the postman "refused" is at Exh.22 on record. Furthermore, the plaintiff-landlord has also examined at Exh.37 the postman on duty at the relevant time by the name of Ashokbhai Jayantilal Vyas. This witness has deposed that he was serving as a postman in Sayla Post Office since last seven years, that he is one of only two postmen engaged in the Sayla Post Office, and that in fact the defendant-tenant had refused to accept the said registered cover on the date of the endorsement viz. 4th August 1983. Both the courts below have not found any reason whatsoever to disbelieve the evidence of the postman, who is a disinterested witness, and in a very small town such as Sayla where he has been serving for seven years, he is bound to know most of the persons or the heads of families where he is delivering the post. In fact he has deposed that he knows the defendant-tenant and has described in detail how and under what circumstances the defendant had refused to accept the Registered cover. Both the courts have found that there is no reason for him to lie on oath. Even otherwise, in his cross-examination, no such suggestion has been put to him that he is lying on oath.

9. Once it is found that the statutory notice under section 12(2) has been served (in law) upon the tenant, it was the duty of the tenant to pay up the arrears of rent within 30 days of receipt of such notice, or to face the consequences contemplated by section 12(3)(a) of the said Act. Since admittedly he had not met the demand within 30 days of the statutory notice, the courts below were justified in passing a decree for eviction.

10. It was sought to be urged by learned counsel for the petitioner that the case would not be covered by section 12(3)(a) inasmuch as the rent included the obligation to pay municipal tax, and that therefore this very fact would exclude the operation of section 12(3)(a) of the said Act. However, this contention is of no substance for the simple reason that the defendant-tenant in his written statement at Exh.11 has clearly asserted that he is not liable to pay Panchayat taxes or other taxes. In the light of this clear defence taken in the written statement, no argument contrary to this averment can be entertained. In any case, the defendant has not proved by appropriate evidence on record that he was liable to pay monthly taxes or Panchayat taxes or any other taxes. Even otherwise, although the landlord has sued for arrears of rent, and for possession on the

ground of arrears, he has not prayed for any outstanding taxes. If the tenant was liable to pay taxes, the landlord would not have failed to make a prayer in this regard. Thus, even on facts and evidence, this contention cannot be sustained. Therefore, the decree passed by the trial court and confirmed by the lower appellate court on the application of section 12(3)(a) is required to be sustained.

11. Even otherwise, even if the contention is not justified on facts, if we consider the hypothetical case of the application of section 12(3)(b) of the said Act, it is still found that the tenant would not be entitled to the protection of this provision. In order to avail of the protection conferred by section 12(3)(b) of the said Act, the tenant has to establish by appropriate evidence on record as per well settled law, that (a) he has deposited in court all the arrears then due on the first date of hearing of the suit (date of framing of the issues), (b) he had continued to make regular deposits in the court during the course of the trial and (c) he has continued to make regular deposits in court even during the pendency of the appeal. When these legal requirements are seen in the context of the facts proved on record, we find that the defendant has failed to prove all the three requirements. In any case, unless the first requirement is proved by the evidence on record, proof of the second and third requirement is merely academic. Unless the tenant has made a deposit of the entire amount of arrears due till the date of framing of the issues, and the deposit has been made on or before the date of framing of the issues, the tenant cannot avail of the benefit of section 12(3)(b) of the said Act. Thus, even considering a hypothetical situation, on an assumption that section 12(3)(b) could possibly be applied, the tenant fails to obtain the protection of this provision on the facts of the case.

12. Consequently the judgement and decree passed by the trial court and confirmed by the appellate court are eminently sustainable and there is no justification for interference by way of the present revision. This revision is, therefore, dismissed. Rule is discharged with costs. Interim relief stands vacated.

13. At this stage learned counsel for the petitioner requests that the interim relief operative so far be extended by four weeks in order to approach Supreme Court. As against the request for four weeks, the request is granted for six weeks, and consequently the interim relief operative so far shall be extended upto

19th January 2001 with a specific observation that no further extension shall be granted.

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